

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

ISAAC H. SMITH, et al.

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:14cv127-KS-MTP

DOLGENCORP, LLC

DEFENDANT

**DOLGENCORP, LLC'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR
APPROPRIATE SANCTIONS DUE TO THE PLAINTIFF'S MISREPRENTATIONS**

COMES NOW the Defendant, Dolgencorp, LLC, ("Dolgencorp"), by and through counsel of record, and files this Motion to Dismiss the Complaint of the Plaintiff, Isaac Smith, ("Mr. Smith") with prejudice or, alternatively, for sanctions due Mr. Smith's material misrepresentations made in his discovery responses and deposition testimony. In support thereof, Dolgencorp would show unto the Court as follows:

1.

On July 12, 2011, Mr. Smith was a customer in the Dollar General store in Foxworth, and suffered a fall. As a result of this fall, he contends he suffered injuries to his left wrist and lumbar spine. Mr. Smith further contends that as a result of these injuries he allegedly suffered in this fall, he underwent two (2) surgeries on his left wrist, on August 31, 2011 and November 15, 2012, and a surgery on his lumbar spine on February 29, 2012.

2.

In support of its Motion to Dismiss, Dolgencorp submits the following documents:

- a. Transcript of the Deposition of Isaac Smith (**Exhibit "1"**);
- b. Interrogatory answers of Isaac Smith (**Exhibit "2"**);
- c. Medical records of Isaac Smith from Hattiesburg Clinic (**Exhibit "3"**);
- d. Medical records of Isaac Smith from Southern Bone & Joint (**Exhibit "4"**);

- e. Medical records of Isaac Smith from Dr. Martins Ugwu-Dike (Exhibit “5”);
- f. Medical records of Isaac Smith from Cook & Fortenberry Pharmacy (Exhibit “6”);
- g. Report of Dr. David Gandy (Exhibit “7”);
- h. Report of Dr. Eugene Quindlen (Exhibit “8”).

3.

Simultaneously herewith, Dolgencorp has submitted a Memorandum in support of its Motion to Dismiss, setting out the factual and legal basis in support of its Motion. This Memorandum is incorporated herein by reference.

4.

Based on the facts, law and arguments set forth in Dolgencorp’s Motion, the appropriate sanction for Mr. Smith’s material misrepresentations made in his deposition and in his discovery responses is a dismissal of his Complaint with prejudice. Alternatively, Dolgencorp submits that, at a minimum, Mr. Smith should be precluded from pursuing any claim for damages related to any medical treatment he received on his left wrist following his first surgery on August 31, 2011, as well as preclude him from pursing any claim for damages related to his low back, including any medical treatment he received on his low back and the surgery performed on February 29, 2012.

WHEREFORE, PREMISES CONSIDERED, based on the facts, legal authorities and argument set forth in its Memorandum and the exhibits hereto, Dolgencorp respectfully requests that this Court enter an Order granting its Motion to Dismiss, and dismiss the Plaintiffs’ Complaint, with prejudice, will all costs associated therewith taxed to the Plaintiffs. Alternatively, Dolgencorp requests that this Court enter an Order precluding Isaac Smith from

pursuing any claims for damages concerning his left wrist following his first surgery on August 31, 2011, and any claims for damages concerning his low back. Dolgencorp further prays for all additional relief it is entitled to, at law or in equity.

RESPECTFULLY SUBMITTED, this the 15th day of June, 2015.

DOLGENCORP, LLC

BY: /s/Matthew D. Miller
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CERTIFICATE OF SERVICE

I, the undersigned, attorney of record for Dolgencorp, LLC, do hereby certify that I have this day electronically filed the foregoing document using the Court's CM/ECF filing system, which provides an electronic copy of same to:

L. O'Neal Williams, Jr.
Williams, Williams & Montgomery, PA
140 Mayfair Road, Suite 1100
Hattiesburg, MS 39402
nealwilliams@wwmlawfirm.net

THIS, the 15th day of June, 2015.

/s/Matthew D. Miller
MATTHEW D. MILLER